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|----------------|-------------|-------------------------|--------------------|-----------------|
| 09 972,603     | 10-04-2001  | James Clifford Fink JR. | 01-4902            | 4637            |

7590 05-21-2003  
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EXAMINER

SOOHOO, TONY GLEN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1723

DATE MAILED: 05-21-2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09:972.603

Applicant(s)

CLIFFORD FINK, JAMES

Examiner

Tony G Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10/4/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 4, 10-11, and 26-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 point out the structural compression ratio as a function of the material being used in the processing. However whereby the claims are not directed to method claims, the scope of the bounds of the ratio is so vague that the inlet to outlet area can not be positively determined.

Dependent claim 4 recite details to the rotational operation speed of the rod, which fails to further define and structurally limit the apparatus of the preceding claimed invention whereby the manner in which the device is to be used and operated fails to distinguish the scope of the claim. The rotation speed of the paddle fails to structurally distinguish the scope of the apparatus because it is narrative in form and therefore the claim(s) fail to point out and further limit the subject matter of a preceding claim. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. In re Fuller, 1929 C.D. 172; 388 O.G. 279.

Claims 10, 11, and 26-27 recite details to the particular mixture being processed by the claimed invention. Whereby it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, Ex parte Masham, 2 USPQ2d 1647 (1987), it is unclear in what further distinction of claims 10 and 11 is from the scope of the respective parent claims 9, and 25

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-13, 15-19, 24-27, 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Meriam US pat. no. 85,117.

Meriam teaches a mixer having at least a set of two vertical paddles K K', which are oriented to provide a compression of material via a funnel inlet/outlet configuration of the slats K K' which is driven by the shaft D via the drive E.

With regards to claim 3 whereby the claim does not positively point out the particular numerical values of the compression ratios, the recitation of claim 3 is deemed merely to point out a narrative to the operation of the device in cooperation with

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different mixture liquidity (high versus low), and does not positively limit of the inlet to the outlet areas ratio of the device.

With regards to claim 4, the rotation of the paddle and operation of a device anticipated the claims does not structurally distinguish the claims from the prior art device. Ex parte Masham, 2 USPQ2d 1647 (1987).

With regards to claims 5 and 9, 12-13, note that the paddle mixture has a size and shape and structure, and is articulated for rotation. Thus it is deemed that the paddle has a size, shape and structure for a mixture of the lard in Meriam's device.

With regards to claims 6 and 8 and 24-25, an attempt to limit the quantity measurement units of the mixture (claim 6) or the container itself (claim 8), as barrel units or pint units is immaterial the structure of the mixer apparatus itself whereby details to the material worked upon by the device, or what standardized unit volume measurement is being used as one measures the volume of the container itself, fails to structurally distinguish the claims from the prior art device. Ex parte Masham, 2 USPQ2d 1647 (1987).

With regards to claims 7, 20, 23, 25, 30, 31, note that the container B is generally cylindrical, the paddle has a radial from the arms F, F, F, F, and H, H, H, H, and the paddle rotates along the center axis at D and the lengths approximate a length of the cylindrical interior of the mix container.

With regards to claims 10-11, 26, 27, details to the consistency of the mix and the final production-item are directed to the product in which the device works upon in use, and it has been held that such a limitation to the claim is immaterial to the patent

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protection of the structural apparatus of the mixer and does not structurally distinguish the claims from a prior art device. Ex parte Masham, 2 USPQ2d 1647 (1987).

With regards to claims 15-18, 29 whereby the claim(s) is/are so broad that it does not limit the thickness of the blade, rod and spokes to a particular value, it is deemed that the blade, spoke and rod thickness of the reference provide an ease of insertion and removal from the container.

With regards to claim 19 whereby the claim is so broad in the term power source, the rod end D is connected to a handle connection for connection to a hand power source.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meriam 85,117 in view of Bradley 95,075.

Meriam discloses all of the recited subject matter as defined within the scope of the claims with the exception of that the length of each paddle blade K are longer than twice the radial width of each paddle K.

Meriam discloses a blade height smaller than that of the diameter of the paddle. However, it is known to provide mixers in a configuration such that the blade height is longer than the diameter, in such a configuration the cylinder of the container and

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corresponding blade is more taller and thinner than shorter and squat. One example is Bradley. Absent any unexpected result the change in shape of the blade and container to be taller and thinner cylinder with taller and thinner paddle would have been an obvious matter of design choice to provide a more effective mixing container and blade for a given smaller foot print diameter while increasing the height so as to provide and maintain sufficient fluid volume, since such a modification would have involved a mere change in the size of a component(s). A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Thus, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the paddle and container of Meriam to be taller and thinner cylinder with taller and thinner paddle would have been an obvious matter of design choice to provide a more effective mixing container and blade for a given smaller foot print diameter while increasing the height so as to provide and maintain sufficient fluid volume, thus the corresponding paddle length of each paddle blade K would be longer than twice the radial width of each paddle so as to provide a more effective mixing container and blade for a given smaller foot print diameter while increasing the height so as to provide and maintain sufficient fluid volume.

7. Claims 21-22 and 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Meriam 85,117 in view of Vollrath 2122187.

Meriam discloses all of the recited subject matter as defined within the scope of the claims with the exception of a valve at the bottom opening a of Meriam and a stand to hold the raise the vessel outlet over the ground.

Vollrath teaches that a mixing vessel 2, 4, including a bottom outlet 76 may have a valve 74, and whereby it is held above the ground by a bracket stand (unnumbered in figure 1) to support the vessel such that the outlet 76 is above the ground.

In view of the showing of Vollrath that a mixing vessel 2, 4, including a bottom outlet 76 may have a valve 74, and whereby it is held above the ground by a bracket stand (unnumbered in figure 1) to support the vessel such that the outlet 76 is above the ground, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the outlet a of Meriam with a valve in the outlet a so that selective discharge of fluid from the container may be provided and further provide a bracket as shown by Vollrath so that the outlet is positioned in a convenient height for discharge of material from the outlet.

### ***Conclusion***

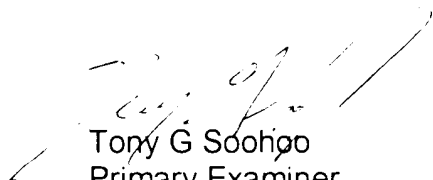
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose blades with oriented surfaces forming a funnel structure with different ratio of inlet area to outlet area: Weston et al 103803, Marsh 87691, Lewis et al 2082752, Lombard 29893, Wedge 1208246, Greene 1958301, Beran 1854732, Hellewell 3551114, Wyss 5037209, Bradley 95075, Slywka 4091457, Linn 230295, Packer 313760.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (703) 308-2882. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri.. The fax phone numbers for the organization where this application or proceeding is assigned



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are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Tony G Soohoo  
Primary Examiner  
Art Unit 1723

tgs